

FEB 02 2010

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

Nos. 09-90007, 09-90008,
09-90009, 09-90010, 09-90011,
09-90012, 09-90107, 09-90108
and 09-90109

ORDER

KOZINSKI, Chief Judge:

Two complainants (brother and sister) have together filed nine misconduct complaints against two district judges and two magistrate judges who were assigned to a criminal case and two seizure actions, all with the brother as a party. The brother alleges that all four judges made various improper substantive and procedural rulings. These charges relate directly to the merits of the judges' rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). A misconduct complaint is not the proper vehicle for challenging the merits of a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

The brother also asserts that the first magistrate judge should not have signed the criminal complaint against him because complainant wasn't physically present at his arraignment hearing. But the docket shows that complainant did

appear at the arraignment hearing, with counsel, and this is confirmed by an audio recording of the hearing. To support his claim that he wasn't present, complainant asserts that he never retained the attorney listed on the docket as representing him at the hearing. The audio recording reveals that counsel's first name was docketed incorrectly, but that the last name is accurate. Complainant thus did appear and was represented by counsel; his contrary allegations are belied by the record. As for the docketing error, the magistrate judge was not responsible for docketing and there is no evidence of improper action, so the charged behavior does not amount to "conduct prejudicial to the effective and expeditious administration of the business of the courts." See 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A). This charge is dismissed.

The brother also alleges that the first district judge improperly accepted unsigned documents from complainant's counsel and improperly granted summary judgment to the government in complainant's seizure action. Because that judge is deceased, this charge is dismissed as moot. See In re Charge of Judicial Misconduct, 91 F.3d 90, 91 (9th Cir. Jud. Council 1996).

The brother further alleges that the second magistrate judge had a conflict of interest because of the judge's prior employment. That judge has since resigned from the federal bench, so this charge is also dismissed as moot. Id.

The brother alleges that the second district judge improperly delayed an evidentiary hearing and complainant's appeal. But delay is not cognizable "unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009). Complainant provides no evidence of improper motive or habitual delay, so these charges must be dismissed.

Both complainants allege that the second district judge was personally biased. But complainants haven't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support this allegation. See In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Vague speculation by prosecutors about the judge's possible reactions if complainant were to reject a plea offer do not constitute proof of misconduct. Nor do the judge's adverse rulings constitute evidence of bias. Because there is no evidence that misconduct occurred, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainants' allegations against prosecutors and federal agents are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

Complainants have filed nine meritless misconduct complaints between them, all concerning the same set of cases. They are cautioned that “[a] complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.” Judicial-Conduct Rule 10(a); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.